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SUBJECT: SPECULATION ON MEXICO'S MEDIA SECTOR

REF: MEXICO 2507

#### Summary and Introduction

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¶1. (SBU) Ernesto Piedras (strictly protect throughout), President of the Competitive Intelligence Unit and Angel Lopez Hoher (strictly protect throughout), Head of the Unit for Planning, Liaison and International Affairs at the Mexican Federal Competition Commission (Cofeco) agreed that a new Mexican media law need not be written and that the pro-competitive nature of the Mexican Federal Communications Commission (Cofetel) and Cofeco has been strengthened through the recent Supreme Court (SCJN) declarations following their review of the 2006 Radio and Television Law. When the final SCJN decision is released, the industry does not expect any major changes to previous SCJN announcements; however, as Lopez remarked, "the devil could be in the details." End Summary and Introduction.

#### New Media Law?

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¶2. (SBU) On July 17 the Policy Coordination Board of the Mexican Senate agreed to form a working group and initiate a review of current radio, television and telecommunications legislation. Published in the Parliamentary Gazette, the agreement stipulates that the Senate working group be multi-party in nature and establish an agenda and order in which topics will be addressed. The Senate Board directed the group to be guided by principles of legality, plurality, inclusion and transparency. The group is also to adhere closely to the resolutions of the SCJN as their guide. Lopez noted that he hopes that the Legislature will not rewrite the media law, but instead look at key points in the process to improve competition. He also noted earlier that the Senate would take the lead in this process.

#### Characteristics of Future Auctions

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¶3. (SBU) In its earlier announcements, the SCJN invalidated an article that established public auctions for spectrum because it favored the most economically powerful groups. Thus far, neither the SCJN nor the Legislative branch has

described how future auctions will be held. In Piedras' opinion, to have a truly open market, concessions must be granted to the highest bidder that meets general financial and legal requirements. He cautioned against involving personal or political decisions in the auction process. Lopez noted that the argument does not make sense. As an example, he recalled the decision granting Telmex's original concession, based on maximizing "social good," which generated a huge amount of waste. He continued noting that auctions must be structured to place a premium on efficiency, relying on criteria such as the provider of the lowest price for publicity or the most efficient use of spectrum.

#### The SCT vs. Cofetel

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14. (SBU) Piedras noted the continuing bureaucratic conflict between the Secretariat of Communications and Transportation (SCT) and Cofetel. Lopez said that no one -- inside the organizations or in the industry -- "understands who does what" between the two organizations. In their declarations, the SCJN ruled against the article which gave the Senate the right to veto presidential appointments to Cofetel. Rafael del Villar and Gonzalo Martinez Pous, the two Cofetel commissioners rejected by the Senate at the end of the Fox Administration, also won a separate injunction against this treatment. Although this ruling is currently being appealed, both Piedras and Lopez believe that Cofetel Commissioners Eduardo Ruiz Vega and Gerardo Gonzalez Abarca, appointed instead of del Villar and Martinez, will eventually be forced from their positions. Piedras speculated that the next presidential appointments to the body may include Pablo Gonzalez Manterola (protect), current Director General of

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Telecommunications in the SCT under del Villar, and Purificacion Carpenteyro (protect), current Director General of the Mexican Postal System and former Director of Strategy, Planning and Innovation at Telefonica Movistar in Mexico.

#### Foreign Investment in the Sector

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15. (SBU) Mexican press and industry speculate that the Spanish firm Telefonica was behind the June legislative proposal that would allow 100% foreign investment in the Mexican fixed line and cable operators assuming that the foreign companies' country permitted reciprocal investment opportunities for Mexican companies. Commenting on this proposal, Lopez noted that he is not sure how it would be implemented. He suggested that Telefonica may partner with Televisa. Lopez highlighted that for the sake of competition, it would be necessary to have an equally big player to face Telmex on the other side of the fence. He added that in principle, Cofeco sees no problem with Telmex providing video services (and that it would even be beneficial for consumers). He did note that in order for SCT Secretary Tellez to change Telmex's current concession,

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Cofeco must first verify that Telmex has successfully implemented interconnection, interoperability and number portability.

#### Comment

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16. (SBU) While the official details have yet to be released, the recent Supreme Court declarations as to the unconstitutionality of many key provisions of the 2006 "Televisa" Law are promising for increased competition in the sector. Although the details of how auctions are to be conducted are unclear, the fact that current duopolists

Televisa and Azteca will not simply be able to inform the government of their intent to offer new services is a step forward for the industry. Even though Calderon has remained behind the scenes in the debate thus far, the industry assumes that he is very cognizant of developments in the sector. In time, Calderon would likely have the power to appoint two new competition-friendly commissioners to Cofetel, without submitting their names first for Senate approval. Cofeco's power was also strengthened through the SCJN decision. Now a company wanting a new radio or television concession must not only seek Cofeco's view, but must receive a favorable opinion from Cofeco in order to proceed. As Lopez noted, the signs are good that the current administration is supportive of change and competition in the sector; now it is just a matter of how much political capital Calderon is willing to spend. End comment.

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